

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHEASTERN DIVISION

Dale Allen Gress,

Plaintiff,

vs.

Don Redmann,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Case No. 3:12-cv-47

**ORDER ADOPTING  
REPORT AND RECOMMENDATION**

The Court has received a Report and Recommendation from the Honorable Karen K. Klein, United States Magistrate Judge, recommending that Dale Allen Gress's petition for habeas corpus under 28 U.S.C. § 2254 be dismissed without prejudice for failing to establish jurisdiction in this Court (Doc. #10). Neither party has objected to the Report and Recommendation.

The Court has reviewed the Report and Recommendation, along with the entire record in this matter, and finds that the Magistrate Judge's position is correct. The Court adopts the Report and Recommendation in its entirety and the respondent's motion to dismiss (Doc. #7) is hereby **GRANTED**. Accordingly, the Court **ORDERS** that Gress's petition is **DISMISSED WITHOUT PREJUDICE** because the Court lacks jurisdiction to hear his claims.

Additionally, the Court finds that any appeal would be frivolous, could not be taken in good faith, and may not be taken *in forma pauperis*. Based upon the entire record before the Court, dismissal of the motion is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. See Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997) (finding that a district court possesses the authority to issue certificates of appealability under Section 2253(c)).

If the petitioner desires further review of his petition, she may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals in accordance with Tiedeman.

**IT IS SO ORDERED.**

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated this 30th day of October, 2012

/s/ Ralph R. Erickson  
Ralph R. Erickson, District Judge  
United States District Court